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8
9 **UNITED STATES DISTRICT COURT**
10 **CENTRAL DISTRICT OF CALIFORNIA**

11 FABRIC SELECTION, INC., a California
12 corporation,

13 Plaintiff,

14 v.

15 BENEDICT’S GOODS, LLC, individually
16 and doing business as “AMARYLLIS
17 APPAREL”, a California limited liability
18 company; ZULILY, LLC, a Delaware
19 limited liability company; and DOES 1
20 through 10,
21 Defendants.

Case No.:

PLAINTIFF’S COMPLAINT FOR
COPYRIGHT INFRINGEMENT

Jury Trial Demanded

1 Plaintiff Fabric Selection, Inc., (“FSI” or “Plaintiff”), by and through its
2 undersigned attorneys, hereby prays to this honorable Court for relief based on the
3 following:

4 **JURISDICTION AND VENUE**

5 1. This action arises under the Copyright Act of 1976, Title 17 U.S.C., §
6 101, *et seq.*

7 2. This Court has federal question jurisdiction under 28 U.S.C. §§ 1331
8 and 1338 (a) and (b).

9 3. Venue in this judicial district is proper under 28 U.S.C. §§ 1391(c) and
10 1400(a) in that this is the judicial district in which a substantial part of the acts and
11 omissions giving rise to the claims occurred.

12 **PARTIES**

13 4. FSI is a corporation organized and existing under the laws of the State of
14 California with its principal place of business in Commerce, California.

15 5. Plaintiff is informed and believes and thereon alleges that Defendant
16 Benedict’s Goods, LLC, individually and doing business as “Amaryllis Apparel,”
17 (“Amaryllis”) is a California limited liability company with its principal place of
18 business located at 15261 Barranca Pkwy, Irvine, CA 92618.

19 6. Plaintiff is informed and believes and thereon alleges that Defendant
20 Zulily, LLC (“Zulily”) is a Delaware corporation with its principal place of business
21 located at 2601 Elliott Avenue Suite 200, Seattle, WA 98121 and is doing business
22 with the State of California.

23 7. Plaintiff is informed and believes and thereon alleges that Defendants
24 Does 1 through 10 (collectively, “DOE Defendants”) (altogether with Amaryllis and
25 Zulily, “Defendants”) are other parties not yet identified who have infringed
26 Plaintiff’s copyrights, have contributed to the infringement of Plaintiff’s copyrights,
27 or have engaged in one or more of the wrongful practices alleged herein. The true
28 names, whether corporate, individual, or otherwise, of DOE Defendants are presently

1 unknown to Plaintiff, which therefore sues said DOE Defendants by such fictitious
2 names and will seek leave to amend this complaint to show their true names and
3 capacities when same have been ascertained.

4 8. Upon information and belief, each of the Defendants was the agent,
5 affiliate, officer, director, manager, principal, alter-ego, and/or employee of the
6 remaining Defendants, and was at all times acting within the scope of such agency,
7 affiliation, alter-ego relationship and/or employment; and actively participated in,
8 subsequently ratified, and/or adopted each of the acts or conduct alleged, with full
9 knowledge of each violation of Plaintiff's rights and the damages to Plaintiff
10 proximately caused thereby.

11 **CLAIMS RELATED TO DESIGN SR70112**

12 9. Plaintiff owns an original two-dimensional artwork that is used for
13 textile printing, entitled SR70112, and registered with the U.S. Copyright Office
14 (hereinafter "Subject Design A.")

15 10. Prior to the acts complained of herein, Plaintiff widely disseminated
16 Subject Design A to numerous parties in the fashion and apparel industries.

17 11. Following Plaintiff's display and distribution of Subject Design A,
18 Defendants, and each of them, created, manufactured, distributed, offered for sale,
19 sold, displayed, reproduced, and/or otherwise used fabric and/or garments featuring a
20 design that is strikingly and/or substantially similar to Subject Design A without a
21 license, authorization, or consent from Plaintiff ("Infringing Product A.")
22 Representative examples of the Subject Design and Infringing Product A are below:

23 ///

24 ///

25 ///

<u>SUBJECT DESIGN A</u>	<u>INFRINGING PRODUCT A</u>
<p data-bbox="451 310 570 348">SR70112</p> 	<p data-bbox="1003 239 1295 348">Feelin' Floral Tee (Style: A-115-PF-S) (SKU: 405277810101)</p> 
<p data-bbox="467 1178 553 1215">Detail</p> 	<p data-bbox="1105 1157 1192 1194">Detail</p> 

1 12. The above comparison makes apparent that the elements, composition,
2 arrangement, layout, and appearance of the design on the Infringing Product A is
3 substantially similar to Subject Design A.

4 13. Plaintiff discovered the Infringing Product in early 2023 and had no
5 reason to know of it prior to that time.

6 14. In April 2023, Plaintiff sent correspondence to Amaryllis in an attempt
7 to resolve this dispute without litigation. Defendants failed to meaningfully respond,
8 necessitating this action.

9 **CLAIMS RELATED TO DESIGN SE60401**

10 15. Plaintiff owns an original two-dimensional artwork that is used for textile
11 printing, entitled SE60401, and registered with the U.S. Copyright Office (hereinafter
12 “Subject Design B.”)

13 16. Prior to the acts complained of herein, Plaintiff widely disseminated
14 Subject Design B to numerous parties in the fashion and apparel industries.

15 17. Following Plaintiff’s display and distribution of Subject Design B,
16 Defendants, and each of them, created, manufactured, distributed, offered for sale,
17 sold, displayed, reproduced, and/or otherwise used fabric and/or garments featuring a
18 design that is strikingly and/or substantially similar to Subject Design B without a
19 license, authorization, or consent from Plaintiff (“Infringing Product B.”)

20 Representative examples of the Subject Design and Infringing Products B are below:

21 ///

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23 ///

<u>SUBJECT DESIGN B</u>	<u>INFRINGING PRODUCT B</u>
<p data-bbox="451 310 565 352">SE60401</p> 	<p data-bbox="834 241 1458 352">Black & Pink Floral-Contrast Flutter-Sleeve Boatneck Top-Women (SKU: A-3023BKF-PIX_FLORALBLACKP_S)</p>   

1 or selling Infringing Products through a nationwide network of retail stores,
2 catalogues, and through online websites.

3 25. Due to Defendants' acts of infringement, Plaintiff has suffered
4 substantial damages to its business in an amount to be established at trial.

5 26. Due to Defendants', and each of their, acts of infringement, Defendants,
6 and each of them, have obtained profits they would not have realized but for their
7 infringement of Plaintiff's copyrights in the Subject Designs. As such, Plaintiff is
8 entitled to disgorgement of Defendants' profits attributable to Defendants'
9 infringement of Plaintiff's rights in the Subject Designs in an amount to be
10 established at trial.

11 27. Upon information and belief, Defendants, and each of them, have
12 committed copyright infringement with actual or constructive knowledge, or in
13 reckless disregard, of Plaintiff's copyrights in the Subject Designs, such that said acts
14 of copyright infringement were, and continue to be, willful.

15 **PRAYER FOR RELIEF**

16 Wherefore, Plaintiff prays for judgment as follows:

- 17 a. That Defendants—each of them—and their respective agents and servants
18 be enjoined from importing, manufacturing, distributing, offering for sale,
19 selling, or otherwise trafficking in any product that infringes Plaintiff's
20 copyrights in the Subject Designs;
- 21 b. That Plaintiff be awarded all Defendants' profits, plus all Plaintiff's losses,
22 attributable to Defendants' infringement of Plaintiff's copyrights in the
23 Subject Designs; or alternatively, if elected before final judgment, statutory
24 damages under the Copyright Act, 17 U.S.C. § 101, *et seq.*;
- 25 c. That Plaintiff be awarded its attorneys' fees under 17 U.S.C. § 505;
- 26 d. That Plaintiff be awarded pre-judgment interest as allowed by law;
- 27 e. That Plaintiff be awarded the costs of this action; and

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1 f. That Plaintiff be awarded such further legal and equitable relief as the Court
2 deems proper.

3 **JURY TRIAL DEMANDED**

4 Plaintiff demands a jury trial on all issues so triable pursuant to Fed. R. Civ. P.
5 38 and the 7th Amendment to the United States Constitution.

6 Respectfully submitted,

7
8 Dated: August 30, 2023

By: /s/ Trevor W. Barrett
Trevor W. Barrett, Esq.
Frank R. Trechsel, Esq.
DONIGER / BURROUGHS
Attorneys for Plaintiff